

Remarks

Claims 1 and 3-15 are pending in the application. The Examiner has rejected Claims 1 and 3-15.

Claim Rejections under 35 U.S.C 102

The Examiner has rejected Claims 1, 3-6 and 9-11 under 35 U.S.C 102(e) as being anticipated by Jenkins et al. (US 6,645,199). Reconsideration and allowance are respectfully requested.

Claim 1 as amended recites an implantable surgical drain to be placed against a tissue of a patient's body for draining fluid and sensing at least one physiological property of the tissue comprising: an elongated conduit configured to be implanted in a patient's body and to rest against but not penetrate the tissue of the body, and to drain fluid from the body, the elongated conduit including a first and a second surface on an outer side of the elongated conduit; at least one sensing element positioned on the first surface of the elongated conduit configured to sense a physiological property of the tissue; and an inflatable compartment positioned behind the sensing element, configured to push the sensing element against the tissue so as to enhance contact between the sensing element and the tissue.

Claim 1 as now amended specifically recites that the elongated conduit is positioned external to the tissue, but does not penetrate the tissue.

The inflatable compartment is configured to enhance the contact between the sensing element and the tissue by bulging behind the sensing element, thereby leading to the element's displacement towards the adjacent tissue as shown in figures 13A-F.

To the contrary, Jenkins teaches a catheter that is configured to penetrate the tissue (i.e. pulmonary vein). Jenkins et al.'s device cannot work external to the tissue, as recited by the limitation in amended independent claim 1.. Jenkins' device is configured to axially push the probe 20 having the sensors 22 (See Figure 1) against the tissue by using the balloon like device 26. Contrary to Jenkins et al., the Applicant's inflatable compartment is configured to rest against the tissue and to orthogonally push the sensing element against the tissue. Therefore, Jenkins et al. fail to anticipate independent claim 1. Claims 3-15 depend from claim 1 and are similarly not anticipated by Jenkins et al.

Claim Rejections under 35 U.S.C 103

The Examiner rejected Claim 7 under 35 U.S.C 103(a) over Jenkins et al. In view of Fiddian-Green (US 6,334,064). The Applicant respectfully requests reconsideration and allowance.

Fiddian-Green does not remedy Jenkins et al.'s failure to teach the limitations of claim 7. Specifically, Fiddian-Green also fails to teach the elongated conduit of claim 1 that is configured to rest against but not penetrate the tissue and further drain fluid from the tissue. Fiddian-Green's catheter would only be able to operate within the tissue. Therefore, Fiddian-Green fails to remedy the deficiencies of Jenkins et al., and Claim 7 is not obvious in view of the cited prior art.

The Examiner further asserts that prior art to Wittes et al. (US 3,680,562), Torre et al. (US Patent Publication 2002/0055757) and Schoolman variously teach the additional limitations of dependent claims 12-15. However, none of the cited prior art

remedies the deficiencies of Jenkins et al. as discussed above with respect to claim 1.

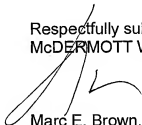
Therefore, claims 12-15 are not obvious and should be allowed.

CONCLUSION

Applicant respectfully submits that the above amendment and remarks place this application in a condition for allowance, which the Applicant respectfully solicits.

A petition for a two-month extension of time under 37 C.F.C. 1.136 is being filed contemporaneously herewith. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 501946 and please credit any excess fees to such deposit account and reference attorney docket no. 64693-0103.

Respectfully submitted,
McDERMOTT WILL & EMERY LLP



Marc E. Brown, Registration No. 28,590

2049 Century Park East
Suite 3800
Los Angeles, California 90067
Date: June 14, 2007
Telephone: (310) 277-4110
Facsimile: (310) 277-4730